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## PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

TREADMILLI

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Typed or printed name \_\_\_\_\_

Application Number

10/033,775

Filed

JANUARY 3, 2002

First Named Inventor

BRUCE ELLIOT KRAMER

Art Unit

3764

Examiner

STEPHEN R. CROW

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☒ applicant/inventor.

☐ assignee of record of the entire interest.  
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96)

☒ attorney or agent of record.  
Registration number 33,725

☐ attorney or agent acting under 37 CFR 1.34.  
Registration number if acting under 37 CFR 1.34 \_\_\_\_\_

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OCTOBER 7, 2010

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below\*.

☐ \*Total of \_\_\_\_\_ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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**REASONS FOR REQUESTING REVIEW**

Applicants respectfully request review of the rejections set forth in the final Office Action of May 7, 2010 for the following reasons.

**Rejection of Claims 6-7, 10-12, 17-19, and 22-26 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement**

Initially, it is believed that claim 17 is included in this rejection in error, as it was not included previously in this rejection and there does not appear to be any additional discussion of this claim. In any event, Applicants submit that it is supported by the disclosure at page 5, lines 10-11. With respect to the rejection of claims 6-7, 10-12, 18-19, and 22-26, Applicants refer to the discussion at page 2, line 2 to page 7, line 13 in the response filed January 19, 2010. Regarding the comment at page 9 in the final Office Action that the references cited by Applicants are not in the Disclosure, Applicants submit that they do not need to be in the Disclosure because they are being cited as evidence of knowledge in the art at the time the present invention was made (see MPEP 2164.05 and 2164.05(a)).

**Rejection of Claims 1 and 13 under 35 U.S.C. 102(b) as being anticipated by Moon et al.**

With respect to this rejection, Applicants refer to the discussion at page 7, line 14 to page 9, line 19 in the response filed January 19, 2010. Regarding the side-by-side discussion on pages 11-12 of the final Office Action, Applicants submit that the meaning

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of the side-by-side term in the claims is the plain meaning of that term that one would ordinarily understand when contemplating two people walking side-by-side.

**Rejection of Claims 1 and 13 under 35 U.S.C. 102(b) as being anticipated by Kelsey et al.**

With respect to this rejection, Applicants refer to the discussion at page 9, line 20 to page 11, last line in the response filed January 19, 2010. As with the rejection over Moon above, Applicants submit that regarding the side-by-side discussion on pages 11-12 of the final Office Action, the meaning of the side-by-side term in the claims is the plain meaning of that term that one would ordinarily understand when contemplating two people walking side-by-side.

**Rejection of Claims 7, 10, 11, 19, 22, and 23 under 35 U.S.C. 102(b) as being anticipated by Piaget et al.**

With respect to this rejection, Applicants refer to the discussion at page 12, line 1 to page 12, last line in the response filed January 19, 2010.

**Rejection of Claims 1, 5, 13, and 17 under 35 U.S.C. 103(a) as being unpatentable over Moon et al in view of Derksen**

With respect to this rejection, Applicants refer to the discussion at page 13, line 1 to page 17, line 2 in the response filed January 19, 2010.

**Rejection of Claims 1, 5, 13, and 17 under 35 U.S.C. 103(a) as being unpatentable over Kelsey et al**

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With respect to this rejection, Applicants refer to the discussion at page 17, line 3 to page 19, last line in the response filed January 19, 2010.

**Rejection of Claims 6 and 18 under 35 U.S.C. 103(a) as being unpatentable over Moon et al or Kelsey et al in view of Nichols**

With respect to this rejection, Applicants refer to the discussion at page 20, line 1 to page 20, last line in the response filed January 19, 2010.

**Rejection of Claims 6 and 18 under 35 U.S.C. 103(a) as being unpatentable over Moon et al or Kelsey et al in view of Gerard**

With respect to this rejection, Applicants refer to the discussion at page 21, line 1 to page 21, line 13 in the response filed January 19, 2010. Regarding the comment on page 13 of the final Office Action that there is a common nexus between the Gerard and Moon and Kelsey devices so that the Gerard reference is fairly applied, Applicants maintain that ski pole grip 42 in Gerard is specifically disclosed in connection with simulated skiing and thus one would not have applied it to the treadmill of Moon or Kelsey, since Moon and Kelsey do not concern an apparatus related to skiing.

**Rejection of Claims 12 and 24 under 35 U.S.C. 103(a) as being unpatentable over Piaget et al in view of Gerard**

With respect to this rejection, Applicants refer to the discussion at page 21, line 14 to page 22, line 2 in the response filed January 19, 2010.

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**Rejection of Claims 25 and 26 under 35 U.S.C. 103(a) as being unpatentable over  
Moon et al in view of Derksen and further in view of Gerard or Nichols**

With respect to this rejection, Applicants refer to the discussion at page 22, line 3 to page 23, line 9 in the response filed January 19, 2010. Regarding the comment on page 13 of the final Office Action that there is a common nexus between the Gerard and Moon and Kelsey devices so that the Gerard reference is fairly applied, Applicants maintain that ski pole grip 42 in Gerard is specifically disclosed in connection with simulated skiing and thus one would not have applied it to the treadmill of Moon, since Moon does not concern an apparatus related to skiing.

**Rejection of Claims 6 and 18 under 35 U.S.C. 103(a) as being unpatentable over  
Moon et al or Kelsey et al in view of Gerard**

With respect to this rejection, Applicants refer to the discussion at page 23, line 10 to page 24, line 9 in the response filed January 19, 2010. Again, regarding the comment on page 13 of the final Office Action that there is a common nexus between the Gerard and Moon and Kelsey devices so that the Gerard reference is fairly applied, Applicants maintain that ski pole grip 42 in Gerard is specifically disclosed in connection with simulated skiing and thus one would not have applied it to the treadmill of Moon or Kelsey, since Moon and Kelsey do not concern an apparatus related to skiing.

**Rejection of Claims 25 and 26 under 35 U.S.C. 103(a) as being unpatentable over  
Kelsey further in view of Gerard or Nichols**

With respect to this rejection, Applicants refer to the discussion at page 24, line 10 to page 25, line 15 in the response filed January 19, 2010. Regarding the comment on

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page 13 of the final Office Action that there is a common nexus between the Gerard and Moon and Kelsey devices so that the Gerard reference is fairly applied, Applicants maintain that ski pole grip 42 in Gerard is specifically disclosed in connection with simulated skiing and thus one would not have applied it to the treadmill of Kelsey, since Kelsey does not concern an apparatus related to skiing.

**Conclusion**

If the Examiner wishes to discuss this application with the undersigned, he is requested to contact the undersigned at the local telephone number listed in the Pre-Appeal Brief Request for Review.

In view of the above remarks, Applicants submit that the present invention is patentable, and withdrawal of the rejections and allowance of this application are respectfully requested.